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Paper No. 10

NUVASIVE INC
10065 OLD GROVE ROAD
SAN DIEGO, CA 92131

COPY MAILED

AUG 04 2003

In re Application of : OFFICE OF PETITIONS
Dan K. Ahlgren :
Application No. 09/904,179 : ON PETITION
Filed: July 11, 2001 :
Attorney Docket No. 5510US :

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 1, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 2, 2003.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (2) above.

As to item (2), petitioner authorized that the petition fee be charged to Deposit Account No. 60-2040. Unfortunately, there were insufficient funds in the Deposit Account. Accordingly, the petition must be dismissed.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
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Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.


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